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**INDEMNITY FOR THE LIABILITY FOR A TORT COMMITTED AT ANOTHER'S REQUEST.** — If an agent, in obedience to the orders of his principal, unconsciously commits a tort against a third person, the principal is bound to indemnify or reimburse him for the liability or loss he incurs.<sup>1</sup> But if the agent is not innocent, he has no such right of reimbursement.<sup>2</sup> This duty of the principal, it would seem, is not necessarily based on a contract, express or implied, but is a quasi-contractual obligation arising out of the agency relation.<sup>3</sup> When a judgment creditor, for instance, expressly directs a sheriff to attach certain goods which, it later appears, do not belong to the judgment debtor, he makes the sheriff his agent *pro tanto*, and is bound to indemnify him against any liability he incurs for the wrongful levy.<sup>4</sup> If, however, there is no such express direction, the sheriff has no right to indemnity, in the absence of an express agreement, since he is not then acting as an agent but independently.<sup>5</sup>

In another class of cases where the relation of principal and agent does not exist there may nevertheless be a right to indemnity based, not on quasi-contractual grounds, but on a promise implied in fact, the intent being gathered from all the circumstances.<sup>6</sup> Such a promise to indemnify against liability may frequently be implied when one person acts at the request of another.<sup>7</sup> While the American cases treat the question whether a promise is fairly to be implied from the request as one of fact, in England the courts have gone further, and, as a matter of law, have imposed an obligation to indemnify when the plaintiff at the defendant's request exercises a statutory or common law duty for the benefit of the defendant, and thereby innocently incurs a liability to a third party.<sup>8</sup>

As to what constitutes a request, and when the promise is to be implied, the cases furnish no clear test. In a recent case a broker identified a woman as the owner of certain shares of stock, and the plaintiff thereupon, at her request, registered a transfer of them. She was in fact fraudulently impersonating the true owner, but the broker had no reason to suspect that fact and he received nothing except a nominal fee for his trouble. It was held that he had impliedly requested the transfer and was bound to reimburse the plaintiff for its outlay in the purchase of new stock for the true owner. *Bank of England v. Cutler*, [1908] 2 K. B. 208. It is difficult to support the decision. Except in the anomalous cases of implied warranty of quality and title in the law of sales and of implied warranty by an agent of his authority in the law of agency,<sup>9</sup> one is not liable for an innocent misrepresentation, even though he knows and intends that the representation will be acted upon.<sup>10</sup> And from the mere misrepresentation innocently made, a request to make the transfer can hardly be inferred. To imply a request by

<sup>1</sup> *Greene v. Goddard*, 9 Met. (Mass.) 212; *Howe v. Buffalo, etc.*, R. R. Co., 37 N. Y. 297.

<sup>2</sup> *Mohr v. Miesen*, 47 Minn. 228.

<sup>3</sup> See *MECHEM, AGENCY*, § 653.

<sup>4</sup> *Higgins v. Russo*, 72 Conn. 238.

<sup>5</sup> *Russell v. Walker*, 150 Mass. 531.

<sup>6</sup> *Dugdale v. Lovering*, 10 C. P. 196. See *King v. U. S.*, 1 Ct. Cl. 38.

<sup>7</sup> See *Birmingham, etc., Co. v. Ry.*, 34 Ch. D. 261.

<sup>8</sup> *Sheffield Corporation v. Barclay*, [1905] A. C. 392.

<sup>9</sup> *Collen v. Wright*, 8 E. & B. 647.

<sup>10</sup> A defendant is not liable in deceit unless he made a misrepresentation knowing it to be false or without honest belief in its truth. *Derry v. Peek*, 14 A. C. 337. As to liability for misrepresentations negligently made, see 14 HARV. L. REV. 184; 21 *ibid.* 439.

the defendant which under the English law will result in an obligation to indemnify regardless of his intent, express or implied, there should at least be an anticipated benefit. And this would seem to be the rule in the previous English decisions.<sup>11</sup> Also in this country where, except in the cases of agency, there must be a promise to indemnify implied in fact, it would in general seem unfair to infer such a promise, unless the defendant expects to get some benefit from the act of the plaintiff.

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POWER OF THE JUDICIARY OVER CONTROVERSIES INVOLVING POLITICAL QUESTIONS. — Since the time of Littleton it has been established law that the decision of political questions is without the province of the courts.<sup>1</sup> But a difficulty arises in determining what are political questions. In this country they would seem to be questions expressly reserved by the Constitution to either the executive or the legislature, and questions which are by the necessary implication of the Constitution so reserved — that is, questions the decision of which by the judiciary would obviously embarrass the action of the executive and legislature within their respective spheres, or which, owing to the superior sources of knowledge of the other two branches, the courts are ill-qualified to decide. Among such are questions as to the jurisdiction of different sovereignties,<sup>2</sup> the duly constituted government of a state,<sup>3</sup> and the status of Indian tribes.<sup>4</sup>

A crucial issue arises where a court is called upon to determine the rights of individuals to property within its jurisdiction when the decision necessarily involves the determination of a political question. As to international questions it is a well-settled rule of international law that municipal courts may determine the title to property situated within their jurisdiction, even though a political question is involved.<sup>5</sup> Accordingly, a foreign sovereign having property within the jurisdiction is amenable to the court's control, since by becoming the owner of the property he has incorporated himself into the juridical system under which he holds it and since a suit against him can be carried on without interfering in any way with any property necessary to the proper discharge of his functions as a sovereign.<sup>6</sup> In accord with this rule is the opinion of a recent case in India which confirms the right of the courts of British India to adjudicate the title to property situated therein belonging to a native prince not subject to the court's jurisdiction, in spite of the fact that the rules governing the descent of the property were the same as those governing the succession to the throne. But, on finding that the real object of the suit was to settle the succession, and that the property right involved was only contingent, the court denied its jurisdiction. *Shamarendra Chandra Deb Barman v. Birenda Kishore Deb Barman*, 12 Calcutta W. N. 777 (Calcutta High Ct., May 21, 1908).

Similarly the United States Supreme Court has held that a mere assertion of property rights will not give jurisdiction over a political question where

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<sup>11</sup> *Carshore v. Ry.*, 29 Ch. D. 344; *Sheffield Corporation v. Barclay*, *supra*.

<sup>1</sup> Wambaugh's *Littleton's Tenures*, Introd. xxxiv, xxxv.

<sup>2</sup> *Williams v. Suffolk Ins. Co.*, 13 Pet. (U. S.) 839; *State v. Wagner*, 61 Me. 178; *Foster v. Neilson*, 2 Pet. (U. S.) 253.

<sup>3</sup> *Luther v. Borden*, 7 How. (U. S.) 1.

<sup>4</sup> *Farrell v. U. S.*, 110 Fed. 942, 951.

<sup>5</sup> *Neel Kisto Deb v. Beer Chunder*, 12 Moore's Ind. App. 523, 534.

<sup>6</sup> *The Charkieh*, L. R. 4 Ad. & Ecc. 59, 97.